

Ramalinga Reddiar Vs. Radhakrishnan

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Court : Chennai

Decided On : Feb-21-1975

Reported in : (1975)2MLJ343

Appellant : Ramalinga Reddiar

Respondent : Radhakrishnan

Judgement :

ORDER

V. Sethuraman, J.

1. The judgment-debtor is the appellant herein. A decree was passed against him by the Sub-Court, Cuddalore, in O.S. No. 281 of 1969. The decree was passed on a joint memo. Under the decree a sum of Rs. 25,000 was payable with interest at 6 per cent, per annum. The amount was payable in monthly instalments of Rs. 1,500 the first instalment to start on 7th December, 1971. As only three instalments were paid, on the application of the decree-holder the decree was transmitted for execution to the District Munsif's Court, Tiruvanamalai. Before the executing Court, a petition under Section 20 of the Tamil Nadu Agriculturists Relief Act, 1938 (IV of 1938) was filed. The learned District Munsif dismissed the application on 10th October, 1973 saying that it was not stated in the petition under what provision of the Act the petitioner was claiming benefit. Even taking for granted that the petitioner was an agriculturist, he pointed out, that under the

compromise decree, interest was claimed only at less than 3 per cent. (This is wrong, as under the joint memo. interest was payable at 6 per cent. He held that the petitioner had failed to establish that he was entitled to the benefits of that Act and that he was not entitled to the prayer for stay under Section 20.

2. Against this order there was an appeal to the Sub-Court, Tiruvannamalai. The learned Subordinate Judge also pointed out that the appellant had not placed any material before the Court to show that he was an agriculturist and that he was entitled to the benefits of that Act. He observed also that the rate of interest worked out to less than 3 per cent, (this is wrong) as against the contract rate of 12 per cent. and that the appellant had not paid any amount before the suit, except the three instalments, as per the decree. He held that the dismissal of the petition was proper, as the petitioner-appellant had not shown as to how he was claiming the benefit of the Act.

3. In the present appeal the submission of the learned Counsel for the appellant was that he had materials before him to show that he was an agriculturist; and that unfortunately the matter had not been properly enquired into by the Courts below. It was submitted that the Courts were wrong in proceeding as if the appellant had to demonstrate the kind of benefit that he was praying for under the Act, in the application under Section 20. The petition under Section 20 of the Act, being only for stay of the execution proceeding, it was submitted that the relevant materials to show the kind of benefit he was asking for would have to be placed in the proceedings under Section 19 of the Act, that were to follow. In these circumstances,, the dismissal of the petition under Section 20 of the Act, it was submitted, was not proper. On behalf of the respondent there was a preliminary objection saying that the appeal filed against the dismissal of the petition under Section 20 of the Act, to the Sub-Court was not competent and that the present second appeal Was also incompetent, as the Sub-Court, had no jurisdiction to deal with this matter. It was further submitted that the burden to show that he was an agriculturist was on the appellant and that as he had not done so far, the dismissal of the petition cannot be complained of. In this connection the learned Counsel drew my attention to the averments in the plaint that the appellant was not an agriculturist, which had not been denied in the written statement. The

further submission on behalf of the respondent was that the appeal should be dismissed in limine, as there was no right of appeal against the proceedings under Section 20 of the Act.

4. Section 25-A of the Act, provides, that an appeal shall lie from any of the orders set out in the section passed by a Court under the said Act, as if such order related to the execution, discharge or satisfaction of a decree within the meaning of Section 47 of the Code of Civil Procedure. There are seven types of orders referred to in Clauses (a) to (f). But there is no reference to any order under Section 20 to be found therein. Sub-section (2) provides that from any order passed on an appeal presented to it under the provisions of Sub-section (1) by a Court subordinate to the High Court an appeal shall lie to the High Court on any of the grounds mentioned in sub-section' (1) of Section 100 of the Code of Civil Procedure. The point that I have to examine is whether the order passed under Sections 20 of the Act dismissing the petition is appealable or not.

5. This matter has been the subject of consideration by a Full Bench of this Court, the decision being reported in *M. Desikachachariar v. Ratnachandra Reddiar* : AIR1951 Mad56 Subba Rao, J., as he then was after considering the authorities cited therein held that an order under Section 20 of the Agriculturists Relief Act dismissing , an application for stay of execution was an appealable order. This decision has also been recently followed in *Kamal Rawther v. Jayaram Gupta* (1975) T.L.N.J. 14.

6. The learned Counsel for the respondent submitted that none of these decisions had considered the impact of Section 25-A on the right of appeal claimed by the appellant against the order under Section 20 of the Act. The first point was that an appeal is only a creature o the statute and that there could be no presumption that any appeal would lie from any order of any Court. Section 25-A was inserted by Section 3 of Madras Act XV of 1943 and re-enacted permanently by Section 2 of Madras Act VII of 1948. It was given retrospective effect from 27th October, 1939. So at the time when the Full Bench was deciding the issue of the appellability of order under Section 20 of the Act, Section 25-A was very much in the statute. The Court has considered the relevant provisions, though Section 25-A is not

specifically to be found referred therein. I do not think that this provision is likely to have been overlooked when the Full Bench passed this judgment. I am satisfied that the decision of the Full Bench would apply fully to the facts herein and that the dismissal of the petition under Section 20 of the Act gives rise to a right of appeal.

7. The next question is as to the forum to which this appeal has to be taken. The learned Counsel for the respondent submitted that the right of appeal if at all could only be to this Court directly and not to the Court of the Subordinate Judge. It was therefore, submitted that the present appeal had to be dismissed as incompetent. Even here there is a decision of a Bench of this Court in *A.P. Jambulinga Mudaliar v. A.S. Vadivelachari and Ors.* : AIR1956 Mad390 . That was a case in which a decree was passed by this Court and then it was transferred under Order 19, Rule 2 of the Original Side Rules corresponding to Section 39 of the Code of Civil Procedure to the Court of the District Munsif of Ranipet for execution. Before the executing Court, there was an application for dismissing the execution petition on the ground that as the amount sought to be recovered by attachment and sale of the properties-related to costs taxed against the defendants, execution could be taken only against the properties charged, and not against the other properties of the judgment-debtor. The learned District Munsif uphold the contention of the judgment-debtors and dismissed the execution petition. Against the dismissal of the execution petition, an appeal was filed before the District Court, North Arcot at Vellore. At that stage-an objection was taken saying that the Court was not competent to entertain appeals for the reason that the decree was for over Rs. 5,000 and that the appeal lay directly to the High Court and not to the District Court. The District Court after considering the decisions cited before it, upheld the contention and directed the memorandum of appeal for presentation to the proper Court. Thereafter an appeal was filed in this Court,. After referring to Section 13 of the Madras Civil Courts Act, Govinda Menon, J, as he then was, pointed out that Section 42 of the Code of Civil Procedure should be considered to be a special provision and that this special provision would govern the case. When a decree passed by the High Court was transferred to the Court of the District Munsif for execution, it was held that an appeal from the order of the District Munsif in execution lay only to the District Court and not to the High Court even if the value of the subject-matter of the suit exceeded Rs. 5,000. In view of this decision, there

is no substance in the objection of the respondent that the appeal to the Sub-Court was incompetent and that the present second appeal was, therefore, incompetent.

8. The learned Counsel for the respondent relied on a decision of the Bench of this Court in *A. Venkataraman and Anr. v. A.R. Srinivasa Sastrigal* : AIR1944 Mad31 for saying that the forum of appeal is dependent on the valuation of the subject-matter and that the provisions of Section 13 of the Madras Civil Courts Act would apply in such a case. I find that there was no discussion of Section 42 of the Code of Civil Procedure in that decision. As has been pointed out by Govinda Menon, J., Section 42 is a special provision and therefore, it will override any general provision. I do not, therefore think that the decision in *A. Venkatarama Ayyar and Anr. v. A.R. Srinivasa Sastrigal* : AIR1944 Mad31 would apply to a case where Section 42 of the Code of Civil Procedure is applicable.

9. The next question that has to be decided is whether the present petition under Section 20 is competent at all. Both the Courts below have found that the appellant had no material to show that he was an agriculturist. As I have already observed, the learned Counsel for the appellant drew toy attention to the averment in the plaint that the appellant was not an agriculturist and that it had not been specifically denied in the written statement. I have looked into the plaint. In paragraph 5 relating to the cause of action, it is stated that the defendant was not an agriculturist. There is a general denial in the written statement in paragraph 8. The matter had not to go for trial, as there was a joint memo, filed by the parties on the basis of which a decree was passed. The respondent was content to take interest at 6 per cent. in spite of the fact that the contract was at the rate of 12 per cent. per annum. At that stage, it was quite, possible that the defendant-appellant proceeded on the basis that his claim about his being agriculturist had not to be finally determined. Therefore the fact that there was an averment in the plaint about the defendant not being an agriculturist, -which had not been specifically gone into at the time of the trial will not stand in the way of the defendant taking up the matter at the appropriate stage in execution. I therefore do not see any substance in the objection that the defendant not having denied the averment in the course of the trial should be taken as estopping him from putting forward the claim that he was an agriculturist at a later stage.

10. Based on the failure of the appellant to produce necessary materials even at the stage of the petition under Section 20 of the Act, the submission for the respondent was that he had not discharged the burden to prove that he was eligible for the stay under Section 20 and that therefore, he would have to take the consequences thereof. There are, of course, Bench decisions of this Court, which had taken the view that the burden is on the person claiming to be an agriculturist. The learned Counsel for the appellant conceded this proposition, so that it is not necessary for me to consider the cited case in this behalf by the respondent. The only point that was made on behalf of the appellant was that he or his counsel had the necessary materials before them and that unfortunately the matter was not approached by the Courts below in such a manner as to allow them to place the materials before it at the appropriate stage. There appears to be some substance in this submission on behalf of the appellant. However, having regard to the fact that the position regarding his being an agriculturist having been put in issue right from the stage of the plaint, his failure to place necessary materials before the Court at any stage so far has to be taken into consideration and before enabling him to go on with the proceedings under Section 20 of the Act, some condition has to be imposed. I think that in the interest of justice it is proper to direct him to deposit a sum of Rs. 10,000 into the executing Court within a period of four months from this date. Subject. to his doing so, the petition under Section 20 of the Act will be considered on merits.

11. Subject to the above condition, the appeal is allowed. There will be no order as to costs. No leave.